

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

WISCONSIN ENERGY	:	
CORPORATION, INTEGRYS	:	
ENERGY GROUP, INC, PEOPLES	:	
ENERGY, LLC, THE PEOPLES GAS	:	
LIGHT AND COKE COMPANY,	:	
NORTH SHORE GAS COMPANY,	:	
ATC MANAGEMENT INC. and	:	
AMERICAN TRANSMISSION	:	Docket No. 14-0496
COMPANY LLC	:	
Application pursuant to Section 7-	:	
204 of the Public Utilities Act for	:	
authority to engage in a	:	
Reorganization, to enter into	:	
agreements with affiliated interests	:	
pursuant to Section 7-101, and under	:	
the Public Utilities Act to effectuate	:	
the Reorganization.	:	

BRIEF ON EXCEPTIONS OF THE
STAFF OF THE ILLINOIS COMMERCE COMMISSION

JOHN C. FEELEY
MATTHEW L. HARVEY
Office of General Counsel
Illinois Commerce Commission
160 North LaSalle Street, Suite C-800
Chicago, IL 60601
Phone: (312) 793-2877
Fax: (312) 793-1556
jfeeley@icc.illinois.gov
mharvey@icc.illinois.gov

Counsel for the Staff of the
Illinois Commerce Commission

May 26, 2015

Table of Contents

	<u>Page</u>
I. INTRODUCTION	2
II. ARGUMENT AND EXCEPTIONS.....	3
A. Exception 1 – Section 7-204(b)(1) & Condition #5 - AMRP	3
B. Exception 2 – Section 7-204(f) & Condition #15 - Inside Meters	7
III. CONCLUSION.....	11

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

WISCONSIN ENERGY
CORPORATION, INTEGRYS
ENERGY GROUP, INC, PEOPLES
ENERGY, LLC, THE PEOPLES GAS
LIGHT AND COKE COMPANY,
NORTH SHORE GAS COMPANY,
ATC MANAGEMENT INC. and
AMERICAN TRANSMISSION
COMPANY LLC

Docket No. 14-0496

Application pursuant to Section 7-
204 of the Public Utilities Act for
authority to engage in a
Reorganization, to enter into
agreements with affiliated interests
pursuant to Section 7-101, and under
the Public Utilities Act to effectuate
the Reorganization.

BRIEF ON EXCEPTIONS OF THE

STAFF OF THE ILLINOIS COMMERCE COMMISSION

Staff of the Illinois Commerce Commission (“Staff”), by and through its counsel, pursuant to Section 200.830 of the Rules of Practice (83 Ill. Adm. Code 200.830) of the Illinois Commerce Commission’s (“Commission”), respectfully submits this Brief on Exceptions to the Proposed Order issued by the Administrative Law Judge (“ALJ”) on May 14, 2015 (“Proposed Order”, “PO” or “ALJPO”).

I. INTRODUCTION

On August 6, 2014, the Wisconsin Energy Corporation, Integrys Energy Group, Inc., Peoples Energy, LLC, The Peoples Gas Light and Coke Company (“Peoples Gas” or “PGL”) and North Shore Gas Company (“North Shore”) (collectively “Gas Companies”), ATC Management Inc. and American Transmission Company LLC (collectively “Joint Applicants” or “JAs”) filed an application (“Application”) for authority to engage in a reorganization and to enter into agreements with affiliated interests, pursuant to Sections 7-101 and 7-204 of the Public Utilities Act (“Act”).

An initial status hearing was held on September 4, 2014, at which time the ALJ set a schedule for the filing of testimony and briefs by the Joint Applicants, Staff and Intervenor. (Tr. 7, September 4, 2014.)

Evidentiary hearings were held on February 18th and 19th 2015 at which time testimony not admitted by affidavit was subject to cross examination.

The record was marked head and taken on April 27, 2015. (ALJ Ruling, April 27, 2015.)

In addition to Staff, the following parties submitted Initial and Reply Briefs on March 27, 2015 and April 10, 2015, respectively, in this matter: JAs, jointly, the Citizens Utility Board (“CUB”) and the City of Chicago (“City”) and on its own, the People of the State of Illinois by Attorney General Lisa Madigan (“AG”).

As indicated above, the ALJPO was issued on May 14, 2015. Although Staff supports many of the PO’s conclusions, there are some to which Staff takes exception as set forth below.

II. ARGUMENT AND EXCEPTIONS

A. Exception 1 – Section 7-204(b)(1) & Condition #5 - AMRP

Argument

With respect to the issue of JA's recommitting to complete AMRP by 2030, the Commission should reject the ALJPO's conclusion and condition number five that adopts the JA's proposed condition number five. Condition number five allows for Peoples Gas to complete the AMRP by 2030 provided that Peoples Gas "continues to receive appropriate cost recovery." (ALJPO, 29.; ALJPO, Appendix A, cond. #5)

The Commission's order in Docket Nos. 09-0166/09-0167 (Cons.) ("2009 Rate Cases Order") determined that completion of AMRP by 2030 was necessary and in the public interest. (Staff IB, 10; Staff RB, 9.) Having made that determination, the Commission required that Peoples Gas complete the AMRP by the year 2030. (North Shore Gas Company and the Peoples Gas Light and Coke Company, ICC Order Docket Nos. 09-0166/0167 (Cons.), 196, January 21, 2010.) Only then did the 2009 Rate Cases Order authorize Rider ICR which allowed Peoples Gas a means to obtain recovery of its AMRP costs, as opposed to Peoples Gas seeking recovery through periodic rate cases. The issue of whether there is a need to accelerate replacement of cast and ductile iron mains is and always has been separate and distinct from the issue of the appropriate cost recovery mechanism. (Staff IB, 8-9.) The Commission's order stated that:

Due to the many benefits that the accelerated plan provides to ratepayers, the Commission is of the opinion that time is of the essence and hereby requires completion of the acceleration plan project by 2030. Any variance from this completion date will require the Company to seek the Commission's approval.

(North Shore Gas Company and the Peoples Gas Light and Coke Company, ICC Order Docket Nos. 09-0166/0167 (Cons.), 196, January 21, 2010) (emphasis added). There is nothing in the 2009 Rate Cases Order that states or even suggests that AMRP's 2030 end date was dependent upon rider cost recovery. Instead, the 2009 Rate Cases Order provides that any change from that 2030 end date would require Commission approval.

Finally, the ALJPO's condition number five use of the phrase "appropriate cost recovery" is a source of concern. (ALJPO, Appendix A, cond. #5.) As the AG pointed out, through cross examination of the JA's witness, the phrase is vague and unclear and only invites future litigation. ("[w]hat the appropriate cost recovery is in future years remains to be seen ...[.]") (AG Cross Ex. 1 at 1)

Accordingly, Staff recommends the following revisions to the ALJPO's conclusions on and Appendix A, #5 on this topic.

Proposed Modification

(ALJPO, 28-31)

Pursuant to Section 7-204(b)(1), the Commission must conclude whether the evidence supports the finding required by Section 7-204(b)(1) that the impact of a proposed Reorganization will not diminish service quality, not whether the proposed merger will enhance service quality. Thus, it is necessary for the Commission to evaluate whether the service quality of the Gas Companies will be reduced by the proposed Reorganization.

With this standard in place, it is necessary to examine the evidence presented by the Joint Applicants and determine whether the standards have been met. The Joint Applicants have presented some voluntary commitments and have agreed to some conditions as proposed by Staff. The evidence demonstrates that Peoples Gas and North Shore Gas will remain largely unchanged. The Gas Companies will retain their local headquarters and will maintain local management on site. The customers will continue to interact with the Gas Companies as they did pre-Reorganization and will not suffer any

disruption of service or adverse impact on the quality of their service as a result of the Reorganization.

The Commission finds that the mere location of the Gas Companies' holding company's corporate headquarters being in a neighboring state does not give rise to any concerns that the interests of the Gas Companies and their customers will be slighted. The management and headquarters of the Gas Companies will remain in Illinois. There has been nothing developed in the record to show that the service quality of the Gas Companies will be impaired by the approval of this Reorganization. The Commission finds that this evidence supports finding that the Reorganization will not diminish the Gas Companies' service quality.

The Commission agrees with Staff that the proposed condition in which the Joint Applicants commit to a minimum amount of capital expenditures will ensure that the Gas Companies continue to make necessary investments in their infrastructure.

Concerning the issue of the AMRP, the Commission disagrees with the Joint Applicants that the language of the condition proposed by Staff requiring the Joint Applicants to "reaffirm" Peoples Gas' "commitment" from Docket No. 09-0166/09-0167 would lead to possible problems for AMRP. ~~The Joint Applicants correctly point out that they did not make any commitment in that proceeding that can be reaffirmed here.~~ The Commission directed Peoples Gas to complete this program by 2030 and any change to the completion date requires Commission approval. The Commission will continue to hold Peoples Gas to this condition that any changes will require Commission approval. The Commission expects that Peoples Gas will be attentive to the prudent operation of its system.

However, the Commission agrees with the opinions expressed by Staff and the Joint Applicants in this proceeding that this is not the proper forum for either evaluating or implementing specific corrective action with respect to the AMRP, or examining the ongoing Liberty investigation. Doing so is beyond the scope of a Section 7-204 proceeding, which is focused on maintaining the service quality of a utility's operations, not developing specific improvements to its management and operations. The Commission already has established a process and procedure for an expert evaluation of the AMRP and a process to implement recommendations developed from that evaluation in the two-phase Liberty investigation initiated by the Commission in Docket 12-0511/12-0152 (Consol.), the 2012 Peoples Gas/North Shore rate case. Adoption of the conditions agreed to by the Joint Applicants and Staff for the implementation of the recommendations from Liberty's Final Report and cooperation with Staff and Liberty in the verification process will protect the interests of ratepayers pursuant to Section 7-204(b)(1). The Commission wants to ensure that the Reorganization does not diminish or otherwise interfere with the process established by the Commission with respect to implementation of recommendations resulting from Liberty's investigation. Moreover, the Commission wants an orderly plan for Peoples Gas and Staff to work collaboratively on the appropriate implementation of Liberty's recommendations.

The Commission finds that the evidence supports the conclusion that the Joint Applicants have demonstrated that they will be ready, willing and able to undertake the implementation of the AMRP with the scope and scale of the additional remedies likely to be seen in Liberty's Final Report. The Joint Applicants presented evidence demonstrating that Wisconsin Energy's management has experience operating large capital projects successfully with emphasis on performance tracking and accountability needed for the AMRP. Wisconsin Energy's management reviewed the Liberty Interim Report and demonstrated that it will agree to implement the AMRP consistent with the findings that will be included in Liberty's Final Report. Significantly, Wisconsin Energy expressed its commitment to support and continue initiatives being made now by Peoples Gas to address Liberty's preliminary findings, such that corrective actions that can be made before the Final Report is issued are not being impeded.

Because the preliminary finding and recommendations of the Interim Report are subject to change, the Commission agrees that it should not impose a condition requiring the implementation of recommendations from the Interim Report.

Additionally, the Commission finds that the Joint Applicants are working appropriately towards a transition plan and integration of operations in light of the evidence that there will be significant continuity in the employees making daily operational decisions for the Gas Companies. Wisconsin Energy is actively involved in the process of reviewing and evaluating the current management and personnel involved with the AMRP to ensure that there will be a seamless transition after Closing. The Commission also notes that AMRP would continue to be a major capital works project for Peoples Gas whether this Reorganization took place or not.

Consequently, to maintain the status quo here with respect to Peoples Gas' current commitment to continue the AMRP and the planned 2030 completion date, the evidence in the record supports adopting the language of the Staff's Joint Applicants' proposed condition, which is based upon the current status of Integrys' plans to continue and complete the AMRP:

~~Peoples Gas will continue the Accelerated Main Replacement Program ("AMRP"), assuming it receives and continues to receive appropriate cost recovery, with a planned 2030 completion date.~~

Joint Applicants will reaffirm Peoples Gas' commitment to the Commission in Docket Nos. 09-0166/09-0167 (Consol.) to complete the Accelerated Main Replacement Program ("AMRP") by the end of 2030.

The Commission adopts this condition 5 in Appendix A as condition 5, as proposed by the Joint Applicants.

* * *

Proposed Modification

(ALJPO, Appendix A, #5)

~~Peoples Gas will continue the Accelerated Main Replacement Program (“AMRP”), assuming it receives and continues to receive appropriate cost recovery, with a planned 2030 completion date.~~

Joint Applicants will reaffirm Peoples Gas’ commitment to the Commission in Docket Nos. 09-0166/09-0167 (Consol.) to complete the Accelerated Main Replacement Program (“AMRP”) by the end of 2030.

B. Exception 2 – Section 7-204(f) & Condition #15 - Inside Meters

Argument

The ALJPO appropriately recognizes that Peoples Gas has a “long standing problem with meter [safety] inspection[s].” (ALJPO, 84.) The ALJPO also correctly recognizes that a failure to inspect meters and pipes in a reasonable time could lead to “catastrophic problems.” (Id. at 85.) The ALJPO however, misapprehends Staff’s position on this issue. The ALJPO states that Staff recommended a compromise proposal, when Staff actually proposed a condition in the “alternative” in the event the Commission agreed with Peoples Gas’ position that in some instances inside meters could not be moved to the outside.

As Staff set forth in its reply brief, Staff's condition that "[a]ny meter that is part of AMRP should be moved outside or to an accessible location inside as part of AMRP by no later than 2030. Any meter not part of AMRP today or going forward must be moved outside or to an accessible location inside within 10 years" was the only condition which would guarantee that all inside meters would, after a date certain, be moved to the outside. (Staff RB, 14-15.) However, in the event that the Commission agreed with Peoples Gas that there may be some instances where inside meters should not be moved outside, then Staff proposed - in the alternative - modifications to JA's condition #15. The ALJPO's Appendix A condition #15 reflects the modification suggested by Staff in its alternative proposal. In order to reflect the fact that Staff advanced a primary position on this issue, and an alternative condition in the event the Commission agreed with JAs that there may be some instances where inside meters should not be moved to the outside, which Staff supports, the following modifications to the ALJPO and ALJPO, Appendix A are necessary.

[STAFF PRIMARY POSITION]

Proposed Modification
(ALJPO, 84-85)

The Commission notes that Peoples Gas has had a long standing problem with meter safety inspections. As pointed out by Staff there are concerns about the meters that have remained inside or in inaccessible locations. Federal regulations enforced under the Illinois Gas Pipeline Safety Act require operators of gas distribution systems, such as Peoples Gas, to conduct periodic leakage surveys and periodically monitor facilities for atmospheric corrosion. Thus, Peoples Gas is required to inspect the pipelines and meters for leaks and corrosion. This includes meters located inside of residences and buildings. The Joint Applicants argue that the conditions requested by Staff would require Peoples Gas to initiate an additional capital program. While the Commission understands the Joint Applicants' argument, there is concern that the pipes and meters

that are not inspected in a reasonable time could lead to catastrophic problems. Staff has proposed condition language which provides that “[a]ny meter that is part of AMRP should be moved outside or to an accessible location inside as part of AMRP by no later than 2030. Any meter not part of AMRP today or going forward must be moved outside or to an accessible location inside within 10 years.” Staff’s proposed condition is the only condition language which guarantees that all inside meters will be accessible to Peoples Gas by a date certain. ~~Staff has recommended a compromise proposal in an effort to address this problem. This proposal would have Peoples Gas develop a new process for Staff’s review. If they cannot agree on a process for leaving some meters inside or not relocating all meters to an accessible location, Peoples Gas would be required to file a petition for review of the proposed process by the Commission. The Commission finds that the Staff condition (Staff IB, Appendix B, #4) compromise as recommended by Staff is hereby adopted as condition 15 of Appendix A.~~

Proposed Modification
(ALJPO, Appendix A, #15)

Any meter that is part of AMRP should be moved outside or to an accessible location inside as part of AMRP by no later than 2030. Any meter not part of AMRP today or going forward must be moved outside or to an accessible location inside within 10 years.~~With respect to indoor meters that are associated with pipe to be replaced as part of AMRP, the Joint Applicants agree that the decision process for leaving meters inside, or not centrally located, needs to be based on a common set of expectations that are uniformly applied. Within six months after the close of the Reorganization, the Joint Applicants will develop a new process for Staff review, with standard criteria and approvals, describing when Peoples Gas will allow a meter to stay inside or in a de-centralized location. If Staff and Peoples Gas are unable to reach an agreement on a process for leaving some meters inside or not relocating all meters to an accessible inside location, then Peoples Gas shall file a petition no later than eight months after the close of the transaction for the initiation of a new docket seeking approval of its proposed process. In that new proceeding, Staff and Peoples Gas will have the opportunity to provide testimony and argument supporting its proposed process for Commission consideration. Regardless of whether Staff and Peoples Gas reach complete agreement on the process or the Commission ultimately decide on the process to be implemented, Peoples Gas will implement the new process and, as part of its discussions with Staff, work on developing and implementing refinements to the process.~~

[STAFF ALTERNATIVE POSITION]

Proposed Modification
(ALJPO, 84-85)

The Commission notes that Peoples Gas has had a long standing problem with meter safety inspections. As pointed out by Staff there are concerns about the meters that have remained inside or in inaccessible locations. Federal regulations enforced under the Illinois Gas Pipeline Safety Act require operators of gas distribution systems, such as Peoples Gas, to conduct periodic leakage surveys and periodically monitor facilities for atmospheric corrosion. Thus, Peoples Gas is required to inspect the pipelines and meters for leaks and corrosion. This includes meters located inside of residences and buildings. The Joint Applicants argue that the conditions requested by Staff would require Peoples Gas to initiate an additional capital program. While the Commission understands the Joint Applicants' argument, there is concern that the pipes and meters that are not inspected in a reasonable time could lead to catastrophic problems. Staff has proposed recommended an alternative in the event the Commission agrees with Peoples Gas that there may be some instances where some meters should not be moved to the outside ~~a compromise proposal in an effort to address this problem~~. This alternative proposal would have Peoples Gas develop a new process for Staff's review. If they cannot agree on a process for leaving some meters inside or not relocating all meters to an accessible location, Peoples Gas would be required to file a petition for review of the proposed process by the Commission. The Commission agrees with Peoples Gas finds that there may be some instances where some meters should not be moved to the outside, therefore the alternative suggested ~~the compromise as recommended by Staff~~ is hereby adopted as condition 15 of Appendix A.

(ALJPO, Appendix A, #15)

[Under Staff's Alternative Position, no changes are necessary to ALJPO, Appendix A, #15.]

III. CONCLUSION

Staff respectfully requests that the Illinois Commerce Commission approve Staff's recommendations in this docket.

Respectfully submitted,

JOHN C. FEELEY
MATTHEW L. HARVEY
Office of General Counsel
Illinois Commerce Commission
160 North LaSalle Street, Suite C-800
Chicago, IL 60601
Phone: (312) 793-2877
Fax: (312) 793-1556
jfeeley@icc.illinois.gov
mharvey@icc.illinois.gov

May 26, 2015

*Counsel for the Staff of the
Illinois Commerce Commission*